

HAROLD E. CARRASCO  
RAY W. CARRASCO

IBLA 86-42

Decided December 10, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, dismissing protest against denial of request to amend management framework plan. CA 18080.

Appeal dismissed; case referred to Director, Bureau of Land Management.

1. Administrative Procedure: Generally -- Appeals -- Board of Land Appeals -- Bureau of Land Management -- Contests and Protests: Generally -- Public Lands: Classification -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Protests

A decision by BLM denying a request to amend an existing resource management plan or a management framework plan is not subject to appeal to the Board of Land Appeals. Although this situation is not expressly covered by the terms of 43 CFR 1610.5-2(a) (which allows administrative review of approval or amendment of resource management plans only via protests to the Director of BLM, whose decision is final for the Department), logic dictates denial of a request for an amendment of such a plan must follow the same avenue of review. It is distinguishable from actions on applications following classification or decisions implementing a management plan or amendment, which are appealable to this Board.

APPEARANCES: Harold E. Carrasco and Ray W. Carrasco, pro sese.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Harold and Ray Carrasco (the Carrascos) have filed a notice of appeal from an August 26, 1985, decision by the California State Director, Bureau of Land Management (BLM), dismissing their protest against BLM's decision not to amend the Benton-Owens Valley Management Framework Plan and the California Desert Plan to open the Southern Inyo Mountains to livestock grazing. The protested decision not to amend these plans was made jointly on April 23, 1985, by the District Managers of the Bakersfield and California Desert

District Offices, BLM, each of which has responsibility to manage portions of the lands sought by the Carrascos to be opened to grazing. <sup>1/</sup>

This case has an involved procedural background, and, as we are dismissing on procedural grounds, it is appropriate to set out this background fully.

The Carrascos' interest in opening the Southern Inyo Mountains to grazing apparently dates back to December 1981, when they evidently requested permission to run 40 head of cattle there. The record does not show that this request was acted on by BLM, but does show that on September 6, 1983, the Carrascos renewed their request. On December 6 and 27, 1983, respectively, the Bishop Resource Area Office, BLM, and the Ridgecrest Resource Area Office, BLM, <sup>2/</sup> denied this request, ruling that grazing was not consistent with the California Desert Conservation Area Plan, and that much of the area sought was classified as wilderness study areas in which new grazing was prohibited. Both decisions informed the Carrascos of their right to seek review under the grazing provisions, 43 CFR Part 4000, including the right to file an appeal with an Administrative Law Judge under 43 CFR 4.470. There is no evidence that the Carrascos sought review of these decisions.

Each Area Manager's decision also invited the Carrascos to apply to amend the management plan to allow grazing in this area. On January 6, 1984, the Carrascos filed a third request that they be allowed to use the Southern Inyo Mountains for grazing, this one with the California State Director, BLM. On January 17, 1984, the State Director forwarded this request to the Bakersfield and California District Managers, to be treated jointly by them as a request for amendment of the management plan, and to be considered by them in consultation with the Bishop and Ridgecrest Area Managers.

On April 23, 1985, the California Desert District Office, and the Bakersfield District Office, issued their joint decision rejecting the application to amend existing land management plans to allow livestock grazing in the Southern Inyo Mountains. On May 28, 1985, the Carrascos filed a putative notice of appeal of this decision with this Board. On May 29, the Board forwarded this notice of appeal to the California Desert District Office, noting that 43 CFR 4.411(a) requires notices of appeal to be filed in the office of the officer who made the decision, not with the Board. That office received the notice of appeal on June 3, 1985.

Normally in these circumstances, BLM would prepare a case file and forward it to the Board along with the notice of appeal. However, in this case BLM treated the notice of appeal as a protest of the April 23 decision not to amend the plans and forwarded it to the California State Office, BLM,

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<sup>1/</sup> The Ridgecrest Resource Area, which is under BLM's California Desert District Office, manages the eastern portion of the public lands that the Carrascos were seeking to use, and the Bishop Resource Area Office, which is under BLM's Bakersfield District Office, manages the western portion of these lands.

<sup>2/</sup> See n.1, *supra*.

for consideration. On August 26, 1985, the State Director issued his decision dismissing the protest, thus affirming the District Offices' joint decision not to amend the plans.

Subsequently, the Carrascos filed another notice of appeal to this Board. This notice was filed on September 16, 1985, in the State Office, and the appeal and supporting case file were duly forwarded to this Board for consideration. However, for the reasons set out below we dismiss this appeal.

[1] The Board has held that protests against approval of a resource management plan or management framework plan (or against an amendment to such a plan) are accorded administrative review only in conformity with the procedures prescribed by 43 CFR Part 1600, governing public land planning. Oregon Natural Resources Council, 78 IBLA 124, 127 (1983); see Oregon Shores Conservation Coalition, 83 IBLA 1, 2 (1984); In re Lick Gulch Timber Sale, 72 IBLA 261, 317 n.44, 90 I.D. 189, 220 n.44 (1983). <sup>3/</sup> These provisions, presently set out at 43 CFR 1610.5-2, allow only for a limited right to protest BLM's planning decision to the Director of BLM, whose decision shall be final for the Department. 43 CFR 1610.5-2(b). No appeal to the Board of Land Appeals is contemplated. Thus, in these cases, the right to seek administrative review lies with the Director, BLM, not with this Board.

We appreciate that the instant case, which involves BLM's denial of a request to amend a plan, is not expressly covered by the terms of 43 CFR 1610.5-2, which addresses only protests against approval of a plan or an amendment to a plan. However, if approval is governed by the 43 CFR 1610.5-2 procedure, logic dictates denial of a request for amendment must follow the same avenue of review. Accordingly, denial of request for amendment is not an action appealable to the Board.

In declining jurisdiction over another recent appeal, we noted that approval of resource management plans or amendments thereof are policy determinations (which fall squarely within the procedures outlined in 43 CFR Part 1600 and, thus, are not appealable to this Board) and are distinguishable from actions on applications following classification or decisions implementing a management plan or amendment (decisions which are appealable to this Board). Santa Fe Pacific Railroad, IBLA 85-834 (Order Oct. 4, 1985).

The Carrascos' opportunity to appeal to this Board BLM's substantive determination to disallow their request to graze cattle in the Southern Inyo Mountains arose in December 1983, when the Bishop and Ridgecrest Resource Area Offices denied them permission to graze. As noted above, both decisions informed the Carrascos of their right to seek review under the grazing provisions at 43 CFR Part 4000, including the right to file an appeal to the Hearings Division, and, ultimately, to this Board. The time for initiating such review has long since expired.

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<sup>3/</sup> The Board has also dismissed two such cases by unpublished order. Santa Fe Pacific Railroad, IBLA 85-834 (Dismissed by Order Oct. 4, 1985); Committee for Idaho's High Desert, IBLA 84-744 (Dismissed by Order Aug. 17, 1984).

Since we have determined that a BLM decision denying a request for amendment of a management framework plan or a resource management plan is reviewable only under 43 CFR Part 1600, we will consider the "appeal" filed by the Carrascos to be a protest under 43 CFR 1610.5-2(a), and we will forward the case file to the Director, BLM, for appropriate action.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

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Wm. Philip Horton  
Chief Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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James L. Burski  
Administrative Judge

